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**SEP 15 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Cole et al. : DECISION ON PETITION  
Application No. 09/904,061 :  
Filed: July 12, 2001 :  
Atty Docket No. 83336.640 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO MPEP 711.03(C), PARAGRAPH I, AND 37 CFR §1.181" filed July 7, 2008.

By Notice of Abandonment mailed June 20, 2008, applicant was advised that the application was abandoned because the period for seeking court review after the decision rendered on May 9, 2008 by the Board of Patent Appeals and Interferences had expired and there were no allowed claims. See 37 CFR 1.304.

In response, applicant filed the instant petition along with a Request for Continued Examination (RCE), the RCE fee and a submission under 1.114(c) in the form of an amendment. Applicant submits that at the time of filing the RCE on July 7, 2008, the two month period for seeking court review, provided in 37 CFR 1.304(a)(1), had not expired.

Petitioner's argument is persuasive. As provided in MPEP 706.07(h), the filing of an RCE is timely within two months after a decision by the Board:

The filing of an RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action in

federal district court, will also result in the finality of the rejection or action being withdrawn and the submission being considered. Generally, the time period for filing a notice of appeal to the Federal Circuit or for commencing a civil action is within two months of the Board's decision. See 37 CFR 1.304 and MPEP § 1216. Thus, an RCE filed within this two month time period and before the filing of a notice of appeal to the Federal Circuit or the commencement of a civil action would be timely filed.

Thus, the RCE filed July 7, 2008 was timely filed. Further the RCE was proper as it included a submission and payment of the RCE fee.

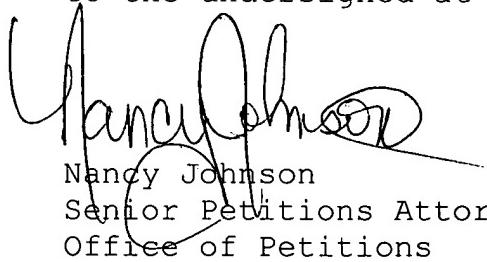
Accordingly, the Notice of Abandonment mailed June 20, 2008 and the holding of abandonment are hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 3714 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment, for consideration by the examiner of the RCE timely filed July 7, 2008.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



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